SUPREME COURT OF THE UNITED STATES.

No. 131.

THOMAS W. PEIRCE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

Petition and pleadings.

THOMAS W. PEIRCE, petitioner,
vs.
THE UNITED STATES.

To the honorable the justices of the Court of Claims of the United States:

Respectfully represents, Thomas W. Peirce, of Boston, county of Suffolk, Commonwealth of Massachusetts, merchant, that he is the holder, in good faith, and the owner, for a valuable consideration by him paid, of sundry drafts, or bills of exchange, made by Russell, Majors & Waddell (whose full names and residences are unknown to him) at the times, severally, of the respective dates thereof, upon the Hon. John B. Floyd, who, at the dates of the said several acceptances, and at the times of the acceptance thereof, was Secretary at War of the United States; which said several drafts or bills of exchange were, by the said John B. Floyd, in his official capacity and in behalf of the said United States, duly accepted, the said several bills amounting to [to] the sum of thirty thousand dollars. And the said Peirce represents that the said bills were, in his belief, duly registered at the War Department, or entered upon its books or papers, at or about the time or times at which the same were accepted; that they were presented for payment at the several times when and at the place at which they were severally made payable; that payment thereof was refused. He also represents that the United States are legally and equitably indebted to him in the full and just amount of the said several acceptances, and are by law and equity bound to pay the same, together with the damages and interest thereon, at the rate of seven per cent. per annum, upon each and every the said bills, from the several maturity thereof.

Your petitioner avers that the said bills are, as hereinafter set forth and described, with the endorsement and acceptance thereon, as follows, to wit:

$5,000. WASHINGTON, *Nov.* 28, 1859.

Ten months after date, for value received, pay to our own order, at the Bank of the Republic, New York city, five thousand dollars, and charge to account of our contract for supplies for the army in Utah.

RUSSELL, MAJORS & WADDELL.

Hon. JOHN B. FLOYD,
Secretary of War.

Indorsement: Russell, Majors & Waddell.

E. L. Acceptance: War Department, Nov. 28, 1859. Accepted. John B. Floyd, Secretary of War.

2 $10,000. WASHINGTON CITY, *May 8th*, 1860.

Six months after date pay to our own order ten thousand dollars, for value received, at the Bank of the Republic, New York city, and charge to account of our transportation contract of the 12th of April, 1860.

RUSSELL, MAJORS & WADDELL.

To Hon. J. B. FLOYD,
Secretary of War.

Indorsement: Russell, Majors & Waddell.
No. 8. Acceptance: War Department, May 8, 1860. Accepted, John B. Floyd, Secretary of War.

$15,000. WASHINGTON CITY, *August 17th*, 1860.

Six months after date pay to our own order, at the Bank of the Republic, New York, fifteen thousand dollars, for value received, and charge to account of our transportation contract of the 12th day of April, 1860.

RUSSELL, MAJORS & WADDELL.

Hon. JOHN B. FLOYD,
Secretary of War.

Indorsement: Russell, Majors & Waddell.
No. 68. Acceptance: Accepted, John B. Floyd, Secretary of War. War Department, August 22, 1860.

The said Thomas W. Peirce avers that the said John B. Floyd, as Secretary of the War Department, and in behalf of the United States, and as the principal officer of an executive department, had authority to accept the above-named drafts or bills of exchange and that, in accepting all and every the said bills, he acted in his official capacity, and in behalf of the said United States. And the said Thomas W. Peirce avers that the said Floyd, in behalf of the United States, as such Secretary of War, was authorized to accept drafts or bills of exchange, of such and the like tenor and effect as the bills aforesaid, and that the said Thomas W. Peirce, relying upon the apparent, as well as upon the actual, authority of the said Secretary of the War Department to make such acceptances, and upon the fact of his acceptance of the bills, became the holder and owner of the bills of exchange hereinbefore set apart and described. The said Peirce also avers that he became such holder and owner, in a regular course of business, of each and every the above-described bills, before they severally matured. The said Peirce also avers that he has heretofore petitioned the Congress of the United States for the payment of the said bills, or for permission under which he could sue the United States thereon; that, so far as he is advised, no action has been taken thereon by Congress, except such as may be derived from a recent enlargement of the powers and jurisdiction of the Court of Claims. He also avers that he has frequently called upon the

War Department for the payment thereof, and exhibited a schedule or memorandum thereof; that the said department has not paid the same or any part thereof; but have wholly neglected and refused such payment.

The said Peirce also avers that he has at all times borne true allegiance to the government of the United States; that he has not, in any way, voluntary aided, abetted, or given encouragement to rebellion against the said government; that the same is true, so far as he has any knowledge, of Russell, Majors & Waddell, the drawers of the said bills; and hereupon he prays that the United States may be adjudged to pay him the amount of the above-described bills, together with his damages and interest thereon.

C. B. GOODRICH, *Counsel.*

Address, 30 Court st., Boston, Massachusetts.
Address of claimant, 50 Water st., Boston.

THOMAS W. PEIRCE.
(Signed) By ANDREW PEIRCE, JR.

I, Andrew Peirce, jr., of Boston, agent and attorney of Thomas W. Peirce, on oath depose and say that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; and that I believe the facts as stated in said petition are true.

(Signed) ANDREW PEIRCE, JR.

DISTRICT OF MASSACHUSETTS,
June 17th, 1863.

Then personally appeared the above-named Andrew Peirce, jr., and made oath to the truth of the above affidavit by him subscribed, according to the best of his knowledge and belief.

Before me—

(Signed) EDWARD T. BROWNE,
Commissioner of the Court of Claims of the United States.

In the Court of Claims, October term, 1864.

Demurrer.

THOMAS W. PEIRCE,
vs.
THE UNITED STATES.

And now come the United States, by Charles Gibson, their solicitor, and say that the said petition and the matter therein contained, in manner and form as the same are above set forth are not sufficient in law for the said claimant to have and maintain his action thereof against the United States, and that the United States are not
4 bound by law to answer the same. And this they are ready to

verify. Wherefore, for want of a sufficient petition in this behalf, the said United States pray judgment, and that the said claimant may be barred from having and maintaining his aforesaid claim against them.

And the said United States show to this court the following causes of demurrer to the said petition:

1. That the said claimant hath, in his said petition, declared upon certain bills of exchange, which, he says, were drawn upon John B. Floyd, Secretary of War, and accepted by him; yet the petition does not aver (otherwise than as a conclusion of law) that the said John B. Floyd had the authority to accept the said bills of exchange in behalf of the United States, nor does the said petition state facts from which such authority is necessarily to be implied.

2. That the said claimant hath, in his petition, declared upon certain instruments of writing, which he says are drafts or bills of exchange, and sets forth no other ground of claim against the United States than that which he hath as helder and endorsee of said instruments of writing; whereas the said instruments of writing are shown in the said petition not to be drafts or bills of exchange.

August 25, 1863.

CHARLES GIBSON,
Solicitor for U. S.
By J. D. McPHERSON,
Ass't Solicitor.

In the Court of Claims, October term, 1863.

Joinder to demurrer.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

And the claimant says that he, notwithstanding anything thereof by the United States above in pleading alleged, ought not to be precluded from having his action and petition aforesaid against the United States, because he says that the petition aforesaid, and the matter in the same contained, are good and sufficient in law for him, the said claimant, to have and maintain his aforesaid action and petition thereof against the United States; which petition, and the matter in the same contained, he, the said claimant, is ready to verify and prove, as the court shall here direct and award; and because the United States do not answer the said petition, nor have hitherto in anywise denied the same, the claimant prays judgment and his debt aforesaid, with his damages, by reason of the not performing of the said several promises and undertakings in the said petition mentioned, to be adjudged to him.

THOMAS W. PEIRCE.
By C. B. GOODRICH.

5 In the Court of Claims, October term, 1863.

Amendment of demurrer.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

The United States demurs to the petition filed in this case for the following reasons:

1. The petition does not show that John B. Floyd, Secretary of War, had any lawful authority to accept the instruments in writing declared on, so as to bind the government to pay the same.

2. No authority is shown whereby said Floyd was authorized to act for the government in that regard.

3. The claim set forth in the petition is not founded upon any law of Congress, or regulation of an executive department; and if so, the same is not set forth in the petition in obedience to the rules of this court.

4. The claim purports to be founded upon two contracts for supplies for the army of Utah, and transportation contract of the 12th April, 1860, and yet the petition does not set forth the said contracts.

6. The claimants have no rights against the United States by virtue of the three drafts mentioned in the petition, and the purchase of the same by the claimant.

6. Assuming that all the facts stated in the petition are true, still the claimant has no cause of action or claim against the United States whereof this court has any jurisdiction.

C. GIBSON.

In the Court of Claims, October term, 1863.

Joinder to the amended demurrer.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

And the claimant says that he, notwithstanding anything by the United States above in pleading alleged, ought not to be precluded from having his action aforesaid against the United States, because he says that the petition aforesaid, and the matter in the same contained, are good and sufficient in law for him, the said claimant, to have and maintain his aforesaid action and petition thereof against the United States; which petition, and the matter in the same contained, he, the said complainant, is ready to verify and prove, as the court here shall direct and award; and because the United States do not answer the said petition, nor have hitherto in anywise denied the same, the ciaimant prays judgment and his debt aforesaid, with his damages, by reason of the not performing of the said several
6 promises and undertakings in the said petition mentioned, to be adjudged to him.

C. B. GOODRICH, *For the Claimant.*

Opinion and order of court.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

In the above-entitled cause, submitted on the 13th instant, Casey, Chief Justice, read the following opinion:

A majority of the judges are of opinion that the court should not decide the case upon the narrow and restricted view of the facts raised and presented by the petition and special demurrers.

And that the parties may have an opportunity of presenting the whole case, unaffected by an intermediate decision, we reserve our opinion on the points presented, and direct the following entry to be made in each of the cases:

And now, to wit, December 13, 1863:

The court, upon due consideration of the premises, do, pro forma, and without prejudice to either of the parties, overrule the special demurrer, and do further order and direct the solicitor of the United States to answer over, and that the case stand for hearing and judgment.

Loring, justice, dissented.

Hughes, justice, did not sit in the cases.

In the Court of Claims, October term, 1863.

Traverse.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

And now come the United States, by John D. McPherson, their solicitor, and say that they are not indebted unto the said Thomas W. Peirce in the sum of $30,000, or any part thereof, in manner and form as said Thomas W. Peirce hath complained.

June 22, 1863.

JOHN D. McPHERSON,
Assistant Solicitor for the United States.

In the Court of Claims, October term, 1863.

Replication.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.
No. 1,887.

And now the said Thomas W. Peirce comes, and in reply to the traverse of the United States, filed in the above-entitled proceeding, says the United States are indebted to him in the several sums,

7 with the damages and interest thereon, as the same are in his

said petition set forth; and that each and every the averments therein contained are true, and this he is ready to prove.

February 16, 1864.

THOMAS W. PEIRCE.
By C. B. GOODRICH,
His Solicitor and Attorney.

8 In the Court of Claims.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

And now, to wit, 14 February, 1866, the court, upon due consideration of the premises, do order, adjudge, and decree that the said claimant take nothing by his suit, and that the said petition be dismissed.

BY THE COURT.

9 In the U. S. Court of Claims.

Petition of Thomas W. Pierce, claimant, for the allowance of an appeal.

THOMAS W. PEIRCE
vs.
THE UNITED STATES.

The claimant in this case sues to recover from the United States the sum of thirty thousand dollars, upon three bills of exchange drawn by Russell, Myers, & Waddell, and accepted by John B. Floyd, Secretary of War. Copies of these bills may be found in the transcript of the original petition. The depositions of Richard Smith and of George W. Riggs, and the statement of Thomas W. Pierce, are to be made a part of this case.

At the hearing, the claimant asserted that the instruments in suit were to be considered, in law, as bills of exchange of the United States; that they were accepted by John B. Floyd, acting in his official capacity, in behalf of the United States; that he was an innocent holder, for value, of these acceptances, and that the United States was therefore liable, in law, to pay the same.

The claimant contended that the Secretary of War had authority to bind the United States by these acceptances—

First. By virtue of the Constitution of the United States, article 2, section 2, and the act of Congress of August 7, 1789, which provide for the office of Secretary of War, and describes it powers and duties.

Second. By virtue of various statutes which relate to the powers and duties of the Secretary of War in regard to contracts for supplies and transportation for the army, and the general management of affairs of the department, especially the acts of Congress of April 14, 1818, and of May 1, 1820.

Third. From the usage of the several departments to accept such bills, and its recognition by Congress.

Fourth. By virtue of the decisions of the Supreme Court of the United States.

Fifth. The claimant further contended that the statement made by Thomas W. Pierce, respecting the admissions by Floyd, and also the contract with Russell, Majors & Waddell, with the evidence of Russell, should be excluded from the case as unimportant.

The court overruled all of these points, and held—

First. That, under the circumstances of this case, the Secretary of War had no authority, either by virtue of any express or implied powers, which were conferred upon him by the Constitution and the laws of the land, to bind the United States, in his official capacity, by the acceptances in suit.

Second. That the act of January 31, 1823, in regard to advances of public money, applied to the head of a department.

Third. That negotiable securities for the payment of money at a future day, were within the act of January 31, 1823, prohibiting advances of money.

Fourth. That by virtue of the act of 31st January, 1823, the acceptances in question were invalid, even in the hands of a bona fide holder for value.

Fifth. That the Secretary of War was prohibited by acts of Congress of August 6, 1846, and of 31st January, 1823, from giving, in his official capacity, in behalf of the United States, the acceptances in suit.

Sixth. That, under the circumstances of the case, the acceptances in question were to be regarded as an attempt to evade the act of 26th February, 1833, and were, therefore, null and void.

Seventh. That the evidence failed to establish any usage or practice in the different departments of the government, by virtue of which the Secretary of War would be justified in accepting, in behalf of the United States, the drafts in suit; and that if such usage or practice were established, it could not avail the claimant, because invalid in in law.

(See the depositions of Richard Smith and George W. Riggs, record, pp. 9, 11.)

Eighth. That it was unnecessary to consider whether the instruments in question were, or were not, to be regarded, in law, as bills of exchange.

Ninth. That, upon the evidence in the case, the claimant was affected with notice of the illegal character of the acceptances, and was, therefore, in the same legal predicament, in respect to competency to maintain this suit, with Russell, Majors & Waddell.

(See statement of Thomas W. Pierce, record, p. 58.)

All of which several rulings, with the final judgment of the court in the premises, your petitioner believes to be erroneous, and prays that he may be allowed to appeal therefrom to the Supreme Court of the United States.

C. CUSHING, *Of Counsel.*

In the case of THOMAS W. PIERCE
vs.
THE UNITED STATES.

The Court of Claims certifies the following alterations and modifications of and additions to the specifications of errors alleged by the petitioner, so as fully, fairly, and distinctly to present the points decided by said court.

11 That the petitioner claimed to recover from the United States thirty thousand dollars upon three bills of exchange set forth in the petition, together with interest and damages thereon.

That the said bills were, at their respective dates, drawn by Russell, Majors & Waddell on Mr. Floyd, as Secretary of War, and were accepted by him, and indorsed by said Russell, Majors & Waddell, as shown thereon; and that the petitioner became the holder and owner thereof by purchase.

That from 1811 to 1817, and during the administration of Mr. Monroe, it was the practice of the government, by the Secretary of War and Postmaster General, to accept bills drawn by subordidate officers and contractors, and that such bills were paid. And a like practice obtained from 1818 to 1863 in relation to bills drawn by persons and navy agents on the Secretary of the Navy, and by ministers and consuls abroad on the State Department.

That the testimony as to the practice stated in the last paragraph was given in the depositions of Richard Smith and George W. Riggs; and the United States, by their solicitor, moved to exclude the same:

1st. Because the purpose of said testimony was to establish a usage of the executive departments, in order to enlarge the powers of a public agent, whose authority is conferred and limited by law.

2d. Because the claimant relies exclusively upon the several instruments in writing described in his petition as "express contracts with the government of the United States," and not upon any usage of any of the executive departments.

That there were four several contracts, made and executed in writing between Russell, Majors & Waddell, the drawers of these bills of exchange, and the United States, the first dated the 16th day of January, 1858, for the transportation of army supplies from Forts Leavenworth and Riley, in Kansas, and other points on the Missouri river, to any depot or post in the Territory of Nebraska south of latitude forty-four north; in the Territory of Oregon south of the the same latitude, and to the Territory of Utah to its south boundary, agreeable to a schedule of prices annexed to the contract. The contract made provision for payment from time to time, as the services might be performed, upon certificates of an officer of the quartermaster's department, a portion when a train was started, and the balance when the supplies should be delivered at their destination. They were to be be paid at the rate specified, either at the quartermaster's office at Fort Leavenworth, or by draft on the assistant treasurer at New York, or in specie, as they might elect.

One dated March 3, 1858, for the delivery of thirty-five hundred beef cattle, to be delivered between the 1st of October, 1858, and

the 1st of January, 1860, to the principal officer or agent of the subsistence department with the army of Utah, in lots of not less than two hundred and fifty head at any one time. Payment to be made by the commissary of subsistence at St. Louis, on presentation of duplicate receipts, for any delivery.

The third contract was for the delivery of 763,000 pounds of flour to the same army, at Great Salt Lake, or at Camp Floyd. Pay-
11 ment was to be made to them by the commissary of subsistence at St. Louis, in checks upon the sub-treasurer in New York, on presentation of duplicate receipts of the officer or agent of the subsistence department at the points of delivery, for each partial delivery.

The fourth and last contract was dated the 11th day of April, A. D. 1860. It was for the transportation of quartermaster's stores from Forts Leavenworth and Riley to Fort Union, in the Territory of New Mexico, and for the years 1860 and 1861; the prices to be paid, as is usual in all such contracts, were contained in a tabular statement or schedule annexed to it. And the contractors were to be paid for such service, and according to the rates contained in the schedule, at the office of the quartermaster's department at Fort Leavenworth, by drafts upon the assistant treasurers of the United States at St. Louis, Missouri, or at New York city; or in specie, (if equally convenient to the quartermaster's department at Fort Leavenworth,) as the said firm might elect.

That during the periods covered by the said contracts, and under an arrangement made between the said contractors and said Floyd, they drew upon him a large number of bills of exchange, amounting in the aggregate to over six millions of dollars. That these bills were drawn upon and accepted by Mr. Floyd, as Secretary of War, and included those now sued upon. That for the first several hundred thousand dollars, bills of lading and vouchers were returned to the Quartermaster General, whose assistant gave the contractors checks on the United States treasurer in New York, which were delivered to their agent, who was deputed by the department to take up these acceptances. But, after the first several hundred thousand dollars, the department allowed the contractors to draw the money accruing on their existing contracts, and to apply the same to the payment of the outstanding acceptances, in their own way. That the acceptances issued in 1858, and most of those issued in 1859, were taken up or retired. That of the acceptances issued in 1860, about two hundred and ninety-five thousand dollars, were, at maturity, taken up and paid by said contractors. Three hundred and forty thousand dollars were returned by them unused to the department; and there remains now outstanding about seventeen hundred and twenty thousand dollars, of which eight hundred and twenty thousand dollars are held by the Department of the Interior, having been placed there in lieu of Indian trust bonds abstracted from the office of the Commissioner of Indian Affairs, and negotiated and used by said contractors in taking up a portion of the acceptances retired; and the residue of said acceptances, amounting to over eight hundred and fifty thousand dollars (including those now sued upon,) are now held by various purchasers.

That the facts stated in the preceding paragraph are found on the depositon of William H. Russell, produced on the part of the defendants. That the petitioner objected to the introduction and reading of the contracts with Russell, Majors & Waddell, and to any evidence showing the state or condition of the accounts of Russell, Majors & Waddell with the War Department, and to the introduction of any proof tending to show any negotiation, understanding, or agreement which may have been had by and between Russell, Majors & Waddell with the War Department in relation to the acceptances by the Secretary of War; and assigns as cause of exception that the bills of exchange set forth in the petition are absolute and unconditional, and cannot be controlled or affected by the contracts, accounts, or negotiations of Russell, Majors & Waddell with the War Department.

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That the petitioner objected to the introduction as evidence of the deposition and statements of William H. Russell, one of the drawers of the bill, declared upon, and to the matters therein contained, which have been introduced in court and offered in evidence by the United States, so far as the same have or may have a tendency to defeat or impair the validity or character of the bills declared upon, to which he has given credit and currency by his name as a party. He also objects that the deposition and statments of William H. Russell are not admissible in proof, because they and the matters therein contained are not relevant to the issue, and because there is no proof that they were communicated or known to the petitioner at or before the time he discounted and became the holder of the bills declared upon; that he also insisted upon objections heretofore taken.

That no regular entry or record of said acceptances was made in the department such as was usual and customary in its official transactions.

That there were large appropriations for subsistence and transportation for the army for those years, and that the unexpended balance of the appropriations for those purposes was, on the 1st July, 1859, $357,696, and on the 1st of July, 1860, was $673,044 79.

It was in evidence that before the petitioner became the purchaser or holder of the acceptances sued upon, he, in a personal interview with Mr. Floyd, at Washington, in which the petitioner sought to ascertain the validity of such paper, then in the market, inquired of Mr. Floyd in relation to such acceptances, If such had been issued by his department? If there was any authority for their issue? If there had been a consideration for them? If they would be paid at maturity? To which questions the said Floyd answered in the affirmative, and further said, in substance, that there was an exigency in the affairs of his department growing out of the Utah war; that it was a bad season when the war begun, and that as the contracts were very large, they required a very large outlay; that there were no contractors with the government who had money sufficient to make the necessary outlay and perform the service as promptly as it should be done; that Russell, Majors & Waddell were large contractors, and had been for years; that they

were prompt and reliable, but that their outlay was so large that the government had to give them some aid; that he, the petitioner, asked of said Floyd, while your treasury is full of money, why not give them the money? and said Floyd responded that there was an
14 express law against that, but there was authority for securities of this character, and that it had been the custom of the department to give them, in certain contingencies, since the organization of the government. And said Floyd furthea said, as the petitioner understood, that he, the said Floyd, made no acceptances until the trains were ready to start, when the contractor had nothing to do but to perform his service, having incurred all his expenses. When the trains were ready to start, he gave these acceptances for about 50 p'r cent.—40 or 50 p'r cent.—upon the amount which would be due when the full service had been performed. And on this evidence it was found by the court that the complainant, before he became the purchaser or holder of said acceptances, had express and explicit notice of the illegal nature and character of the transactions out of which the securities took their rise; and knew that Congress had supplied the Secretary of War with money to pay for all the supplies and transportation the army needed.

That the evidence stated in the preceding paragraph was given in the deposition of the petitioner, adduced by [by] the defendants, and the petitioner objected to the admission of the examinations of himself, so far as they contain or purport to give the statements of the Hon. John B. Floyd, Secretary of the War Department, in relation to bills to which he has given his official signature. And he assigned as grounds of his objection—

1st. That the said Secretary cannot, by his testimony or statements, defeat or impair or discredit negotiable instruments to which he has given his official signature.

2d. The statements coming from any source of proof are not admissible to vary, defeat, impair, or discredit the bills declared upon or to control the construction or import thereof.

3. Because there is no evidence in the cause for which it can be inferred that the statements had any reference to or connexion with the bills declared on.

That at the hearing the claimant asserted that the instruments in suit were to be considered in law as bills of exchange of the United States; that they were accepted by John B. Floyd, acting in his official capacity in behalf of the United States: that he was an innocent holder for value of these acceptances, and that the United States were therefore liable in law to pay the same.

That the claimant contended that the Secretary of War had authority to bind the United States by these acceptances—

First. By virtue of the Constitution of the United States article 2, section 2, and the act of Congress of Aug't 7, 1789, which provides for the office of Secretary of War and prescribed its duties and powers.

Second. By virtue of various statutes which relate to the powers and duties of the Secretary of War in regard to contracts for supplies

and transportation for the army, and the general management of the affairs of the department, especially the acts of Congress April 14, 1818, and of May 1, 1820.

15 Third. From the usage of the several departments to accept such bills and its recognition by Congress.

Fourth. By virtue of the decisions of the Supreme Court U. S. of the United States.

That the court decided—

First. That under the circumstances of the case, the Secretary of War had no authority to [to] bind the United States by the acceptances in suit, and that they are not liable upon them.

Secondly. That the act of Jan'y 31, 1823, c. 9, applied to the head of a department.

Thirdly. That negotiable securities were within the act of Jan'y 31, 1823, c. 9, prohibiting advances of money.

Fourthly. That by virtue of the act of 31 Jan'y, 1823, c. 9, the acceptances in question are invalid.

Fifthly. That the Secretary of War was prohibited by the acts of 31 Jan'y, 1823, c. 9, and of Aug't 6, 1846, from giving, in his official capacity in behalf of the United States, the acceptances in suit.

Sixthly. That under the circumstances of the case, the acceptances in question were to be regarded as an attempt to evade the act of 31 Jan'y, 1823, and 26 Feb., 1853, and were therefore null and void.

Seventhly. That the evidence failed to establish any usage or practice in the different departments of the government, by virtue of which the Secretary of War was authorized to accept, or justified in accepting, in behalf of the United States the bills in suit, and that if such usage or practice were established, it could not avail the claimant, because forbidden by law.

Eighthly. That it was unnecessary to consider whether the instruments in question were or were not to be regarded in law as bills of exchange in form.

Ninthly. That upon the evidence in the case the claimant was affected with actual notice of the illegal character of the acceptances, and was therefore in the same legal predicament in respect to competency to maintain this suit with Russell, Majors & Waddell.

Tenthly. That the Secretary of War was not authorized to bind the United States by the acceptances in suit by virtue of the decisions of the Supreme Court, or any of them.

That the court adjudged that said petition should be dismissed.

All of which several rulings above specified, with the final judgment of the court, the petitioner alleges to be erroneous, and prays that he may be allowed an appeal therefrom to the Supreme Court of the United States.

16 In the Court of Claims, June 21st, 1866.

THOMAS W. PIERCE
vs.
THE UNITED STATES.

Ordered that the appeal in the above-named case be allowed and certified with the alterations and modifications of, and additions to, the points decided and alleged for error in the claimants petition for an allowance of an appeal by the court.

In the Court of Claims.

THOMAS W. PIERCE
vs.
THE UNITED STATES.

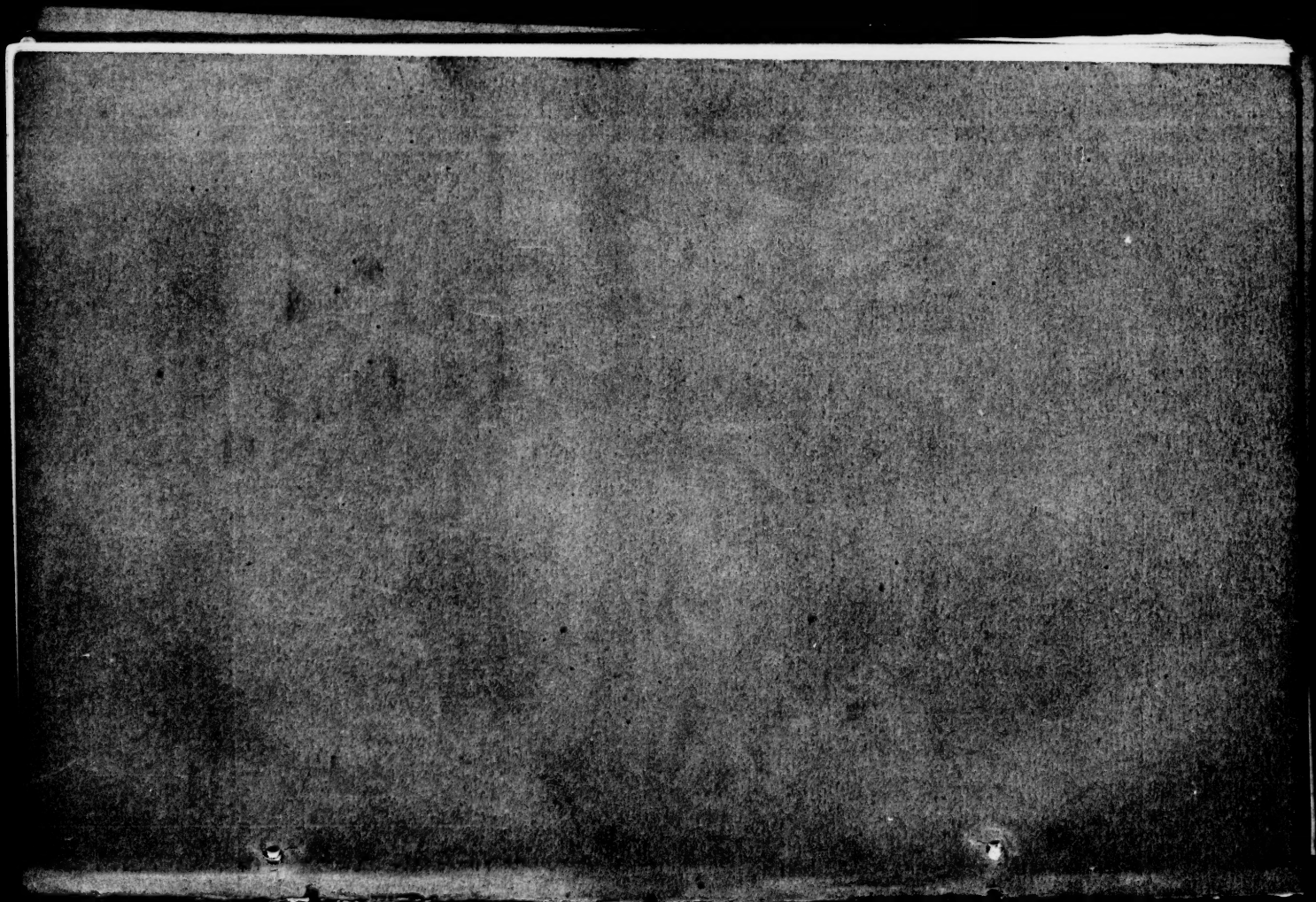
I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing is a true transcript of the pleadings in the above-entitled cause, and of the rulings and final judgment of the court thereon; also of the petition of the claimant for the allowance of an appeal filed within ninety days of the rendition of judgment in said case, and of the order of the court allowing the same; also of the alterations and modifications of, and additions to, the points decided and alleged for error, as certified by the court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 14 day of July, A. D. 1866.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest:

JOS. CASEY,
Ch. J. Court of Claims.



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